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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MARISSA WEISBERG, individually) Case No.
and on behalf of all others similarly)
situated,) **CLASS ACTION**
Plaintiff,)
vs.) **COMPLAINT FOR VIOLATIONS**
SUNTIME ENERGY; DOES 1-10,) **OF:**
inclusive)
Defendant(s).) 1. NEGLIGENT VIOLATIONS
) OF THE TELEPHONE
) CONSUMER PROTECTION
) ACT [47 U.S.C. §227 ET
) SEQ.]
) 2. WILLFUL VIOLATIONS
) OF THE TELEPHONE
) CONSUMER PROTECTION
) ACT [47 U.S.C. §227 ET
) SEQ.]
)
) **DEMAND FOR JURY TRIAL**
)
)

Plaintiff, MARISSA WEISBERG (“Plaintiff”), individually and on behalf of all others similarly situated, alleges the following upon information and belief based upon personal knowledge:

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NATURE OF THE CASE

1. Plaintiff brings this action individually and on behalf of all others similarly situated seeking damages and any other available legal or equitable remedies resulting from the illegal actions of Suntime Energy, (“Defendant”), in negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff’s cellular telephone in violation of the Telephone Consumer Protection Act, *47. U.S.C. § 227 et seq.* (“TCPA”), thereby invading Plaintiff’s privacy.

JURISDICTION & VENUE

2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff, a resident of California, seeks relief on behalf of a Class, which will result in at least one class member belonging to a different state than that of Defendants, a company with its principal place of business and State of Incorporation in California state. Plaintiff also seeks up to \$1,500.00 in damages for each call in violation of the TCPA, which, when aggregated among a proposed class in the thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction. Therefore, both diversity jurisdiction and the damages threshold under the Class Action Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

3. Venue is proper in the United States District Court for the Central District of California pursuant to *18 U.S.C. 1391(b)* and *18 U.S.C. § 1441(a)* because the Defendants do business within the state of California and the county of Los Angeles.

PARTIES

4. Plaintiff, MARISSA WEISBERG (“Plaintiff”), is a natural person residing in Los Angeles, California and is a “person” as defined by *47 U.S.C. § 153 (10)*.

5. Defendant, Suntime Energy, (“Defendant Venture”), is company engaged in the business of providing solar power systems and designs, and is a “person” as defined by *47 U.S.C. § 153 (10)*.

6. The above named Defendants, and their subsidiaries and agents, are collectively referred to as "Defendants." The true names and capacities of the Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues such Defendants by fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the Complaint to reflect the true names and capacities of the DOE Defendants when such identities become known.

7. Plaintiff is informed and believes that at all relevant times, each and every Defendant was acting as an agent and/or employee of each of the other Defendant and was acting within the course and scope of said agency and/or employment with the full knowledge and consent of each of the other Defendants. Plaintiff is informed and believes that each of the acts and/or omissions complained of herein was made known to, and ratified by, each of the other Defendants.

FACTUAL ALLEGATIONS

8. Beginning in or around October of 2015, Defendants contacted Plaintiff on her cellular telephone, 323-486-4247, in an attempt to solicit its services to Plaintiff.

9. Defendants used an “automatic telephone dialing system”, as defined by *47 U.S.C. § 227(a)(1)* to place its daily calls to Plaintiff seeking to collect the debt allegedly owed by her mother

10. Defendants' calls constituted calls that were not for emergency purposes as defined by *47 U.S.C. § 227(b)(1)(A)*.

11. Defendants' calls were placed to telephone number assigned to a cellular telephone service for which Plaintiff incurs a charge for incoming calls pursuant to *47 U.S.C. § 227(b)(1)*.

12. Defendants never received Plaintiff's "prior express consent" to

1 receive calls using an automatic telephone dialing system or an artificial or
2 prerecorded voice on her cellular telephone pursuant to 47 U.S.C. § 227(b)(1)(A).
3

4 **CLASS ALLEGATIONS**

5 13. Plaintiff brings this action on behalf of herself and all others similarly
6 situated, as a member of the proposed class (hereafter "The Class") defined as
7 follows:

8 All persons within the United States who received any
9 collection telephone calls from Defendant to said
10 person's cellular telephone made through the use of any
11 automatic telephone dialing system and such person had
12 not previously consented to receiving such calls within
13 the four years prior to the filing of this Complaint

14 14. Plaintiff represents, and is a member of, The Class, consisting of All
15 persons within the United States who received any collection telephone calls from
16 Defendants to said person's cellular telephone made through the use of any
17 automatic telephone dialing system and such person had not previously not
18 provided their cellular telephone number to Defendant within the four years prior
19 to the filing of this Complaint.

20 15. Defendants, their employees and agents are excluded from The Class.
21 Plaintiff does not know the number of members in The Class, but believes the Class
22 members number in the thousands, if not more. Thus, this matter should be
23 certified as a Class Action to assist in the expeditious litigation of the matter.

24 16. The Class is so numerous that the individual joinder of all of its
25 members is impractical. While the exact number and identities of The Class
26 members are unknown to Plaintiff at this time and can only be ascertained through
27 appropriate discovery, Plaintiff is informed and believes and thereon alleges that
28 The Class includes thousands of members. Plaintiff alleges that The Class

1 members may be ascertained by the records maintained by Defendants.

2 17. Plaintiff and members of The Class were harmed by the acts of
3 Defendants in at least the following ways: Defendants illegally contacted Plaintiff
4 and Class members via their cellular telephones thereby causing Plaintiff and Class
5 members to incur certain charges or reduced telephone time for which Plaintiff and
6 Class members had previously paid by having to retrieve or administer messages
7 left by Defendants during those illegal calls, and invading the privacy of said
8 Plaintiff and Class members.

9 18. Common questions of fact and law exist as to all members of The
10 Class which predominate over any questions affecting only individual members of
11 The Class. These common legal and factual questions, which do not vary between
12 Class members, and which may be determined without reference to the individual
13 circumstances of any Class members, include, but are not limited to, the following:

- 14 a. Whether, within the four years prior to the filing of this
15 Complaint, Defendants made any collection call (other than a
16 call made for emergency purposes or made with the prior
17 express consent of the called party) to a Class member using
18 any automatic telephone dialing system to any telephone
19 number assigned to a cellular telephone service;
- 20 b. Whether Plaintiff and the Class members were damages
21 thereby, and the extent of damages for such violation; and
- 22 c. Whether Defendants should be enjoined from engaging in such
23 conduct in the future.

24 19. As a person that received numerous collection calls from Defendant
25 using an automatic telephone dialing system, without Plaintiff's prior express
26 consent, Plaintiff is asserting claims that are typical of The Class.

27 20. Plaintiff will fairly and adequately protect the interests of the members
28 of The Class. Plaintiff has retained attorneys experienced in the prosecution of

1 class actions.

2 21. A class action is superior to other available methods of fair and
 3 efficient adjudication of this controversy, since individual litigation of the claims
 4 of all Class members is impracticable. Even if every Class member could afford
 5 individual litigation, the court system could not. It would be unduly burdensome
 6 to the courts in which individual litigation of numerous issues would proceed.
 7 Individualized litigation would also present the potential for varying, inconsistent,
 8 or contradictory judgments and would magnify the delay and expense to all parties
 9 and to the court system resulting from multiple trials of the same complex factual
 10 issues. By contrast, the conduct of this action as a class action presents fewer
 11 management difficulties, conserves the resources of the parties and of the court
 12 system, and protects the rights of each Class member.

13 22. The prosecution of separate actions by individual Class members
 14 would create a risk of adjudications with respect to them that would, as a practical
 15 matter, be dispositive of the interests of the other Class members not parties to such
 16 adjudications or that would substantially impair or impede the ability of such non-
 17 party Class members to protect their interests.

18 23. Defendants have acted or refused to act in respects generally
 19 applicable to The Class, thereby making appropriate final and injunctive relief with
 20 regard to the members of the California Class as a whole.

22 **FIRST CAUSE OF ACTION**

23 **Negligent Violations of the Telephone Consumer Protection Act**

24 **47 U.S.C. §227 et seq.**

25 24. Plaintiff repeats and incorporates by reference into this cause of
 26 action the allegations set forth above at Paragraphs 1-23.

27 25. The foregoing acts and omissions of Defendant constitute numerous
 28 and multiple negligent violations of the TCPA, including but not limited to each

and every one of the above cited provisions of 47 U.S.C. § 227 *et seq.*

26. As a result of Defendants' negligent violations of *47 U.S.C. § 227 et seq.*, Plaintiff and the Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

27. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection

Act

47 U.S.C. §227 et seq.

(Against All Defendants)

28. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-27.

29. The foregoing acts and omissions of Defendants constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227 et seq.*

30. As a result of Defendants' knowing and/or willful violations of 47 U.S.C. § 227 *et seq.*, Plaintiff and the Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

31. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

1 **FIRST CAUSE OF ACTION**

2 **Negligent Violations of the Telephone Consumer Protection Act**

3 **47 U.S.C. §227 et seq.**

- 4 • As a result of Defendants' negligent violations of *47 U.S.C. §*
5 *227(b)(1)*, Plaintiff and the Class members are entitled to and request
6 \$500 in statutory damages, for each and every violation, pursuant to
7 *47 U.S.C. § 227(b)(3)(B)*.
8 • Any and all other relief that the Court deems just and proper.

9 **SECOND CAUSE OF ACTION**

10 **Knowing and/or Willful Violations of the Telephone Consumer Protection**

11 **Act**

12 **47 U.S.C. §227 et seq.**

- 13 • As a result of Defendants' willful and/or knowing violations of *47*
14 *U.S.C. § 227(b)(1)*, Plaintiff and the Class members are entitled to
15 and request treble damages, as provided by statute, up to \$1,500, for
16 each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)* and
17 *47 U.S.C. § 227(b)(3)(C)*.
18 • Any and all other relief that the Court deems just and proper.

19
20 Respectfully Submitted this 13th day of November, 2015.

21 LAW OFFICES OF TODD M. FRIEDMAN, P.C.

22 By: /s/ Todd M. Friedman

23 Todd M. Friedman

24 Law Offices of Todd M. Friedman

25 Attorney for Plaintiff

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